APPENDIX A — OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DECIDED FEBRUARY 21, 2007

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-6112-04T3
A-2762-05T3
CONSOLIDATED

MORGANVILLE ENVIRONMENTAL CORPORATION,

Plaintiff-Appellant,

v.

CHATEAU DEVELOPMENT CORP., a New Jersey Corporation; STATE OF NEW JERSEY; CEC SYSTEMS, INC.; and PALMIERI ENGINEERING CO.,

Defendants,

and

UNITED STATES DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY,

Defendant-Respondent.

Appendix A

UNITED STATES DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY,

Plaintiff-Respondent,

v.

DAVID L. ROBERTSON; CHATEAU DEVELOPMENT CORP.; STATE OF NEW JERSEY; JOHN J. VAIL; CEC SYSTEMS, INC.; THOMAS P. SANTRY, ASSIGNEE OF THOMAS P SANTRY, P.A.; GENERAL MOTORS ACCEPTANCE CORP.; AGWAY INC. d/b/a ENGLISHTOWN AGWAY; PALMIERE ENGINEERING CO.,

Defendants,

and

MORGANVILLE ENVIRONMENTAL CORPORATION,

Defendant-Appellant.

PER CURIAM.

Morganville Environmental Corporation ("Morganville") appeals from trial court orders entered June 10, 2005, in a foreclosure action captioned *Morganville Environmental Corp. v. Chateau Development Corp.* et al., and December 23, 2005, in a foreclosure action captioned *United States Department of Agriculture v. Robertson*, et al. The appeals revolve around the same parcel of land and have been consolidated. After reviewing the record in light of the contentions advanced on appeal, we affirm.

Appendix A

In 1980, David L. Robertson purchased a thirty-acre parcel of land in Jackson, New Jersey, intending to use it for farming purposes. In conjunction with that purchase, he gave a mortgage to the United States Department of Agriculture ("USDA") for $50,000. Robertson did not make timely payments on this mortgage, but the USDA did not initiate foreclosure proceedings. It did, however, make regular payments toward the municipal taxes due.

In 1988, Robertson conveyed the property to Chateau Development Corporation ("Chateau") for $305,000 and took back a mortgage for $280,000. Chateau intended to use the land not for agriculture but for the construction of modular housing. The USDA mortgage remained unsatisfied. Chateau was unsuccessful in its plans to develop the property, and it made no payments on Robertson's mortgage. Chateau's corporate charter was revoked in 1993.

In April 2004, Robertson assigned his interest in the Chateau mortgage to Morganville. Robertson is the sole shareholder of Morganville. In June 2004, Morganville began an action to foreclose on the Chateau mortgage and joined the USDA as a party. In March 2005, the USDA began its own foreclosure action, seeking to foreclose on the mortgage that Robertson had granted in 1980. The USDA also moved for summary judgment in Morganville's foreclosure suit, seeking to be dismissed as a defendant. The trial court granted this motion by order dated June 10, 2005. That is the first of the orders on appeal.

By the time these two foreclosure actions were filed, more than twenty years had elapsed without Robertson

making a payment to the USDA on its mortgage. Both the USDA and Morganville moved for summary judgment in the USDA's foreclosure action. The USDA argued that its mortgage held priority over the 1988 Chateau mortgage which had been assigned to Morganville. Morganville responded that it held first position because the USDA's mortgage was barred by New Jersey's twenty-year period of limitations for foreclosure actions. *Security National Partners v. Mahler*, 336 N.J.Super. 101, 108 (App.Div.2000), *certif. denied*, 169 N.J. 607 (2001). The trial court ruled in favor of the USDA and granted its motion for summary judgment by its order of December 23, 2005. That is the second order before us on appeal.

Morganville argues on appeal that the USDA mortgage is no longer valid in light of the passage of time and that the USDA should be barred by laches from proceeding with this foreclosure action. We are unable to agree. As a department of the federal government, the USDA is not subject to New Jersey's twenty-year period of limitations. And in the context of this matter, we can perceive nothing inequitable about permitting the USDA to proceed to foreclose. We agree with the trial court that barring the USDA from foreclosing would instead produce the wholly inequitable result of a corporate entity entirely owned by Robertson owning this property when Robertson made no payments either toward his mortgage indebtedness or the municipal taxes. We reject Morganville's arguments and affirm, substantially for the reasons expressed by the trial court in its letter opinion of December 23, 2005.

Affirmed.

APPENDIX B — ORDER ON MOTION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION FILED FEBRUARY 27, 2007 SUBMITTED TO COURT MARCH 7, 2007

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
Appellate Division

Docket No.	A-006112-04T3
Motion No.	M-003703-06
Before Part	E
Judge(s)	Wefing
	Yannotti
	Messano

MORGANVILLE ENVIRONMENTAL CORPORATION

vs

CHATEAU DEVELOPMENT CORPORATION

APPELLATE DIVISION

MOTION FILED: February 27, 2007
By MORGANVILLE ENVIRONMENTAL CORP

Submitted to Court March 07, 2007

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 9 DAY of March, 2007 Hereby Ordered as follows:

Appendix B

Motion by Appellant for reconsideration Denied

OCN F-11548-04

For the Court
/s/ Dorothy O'C Weffing P.J.A.D.

APPENDIX C — LETTER OPINION OF THE HON. JAMES D. CLYNE, P.J.Ch., SUPERIOR COURT OF NEW JERSEY DATED DECEMBER 23, 2005

SUPERIOR COURT OF NEW JERSEY

Chambers of
Judge James D. Clyne

Ocean County Court House
P.O. Box 2191
Toms River, N.J. 08754-2191

December 23, 2005

Robert Farrington, Esq.
Law Office of Frank Martone
1455 Broad Street
Bloomfield, New Jersey 07003

Seymour Gelzer, Esq.
Attorney at Law
92 Union Valley Road
Monroe Township, New Jersey 08831

RE: United States Department of Agriculture
v. Robertson, et al.
Docket Number F-3886-05

Dear Counsel:

Please accept this letter as the Court's decision with regard to the above matter. In anticipation of trial, counsel prepared a statement of undisputed facts. The

Court hereby incorporates that statement as though set forth at length. To some extent those stipulations are repeated in this opinion where necessary to give context to the findings of fact and conclusions of law contained in this opinion letter.

In this action, the United States government, through the auspices of the United States Department of Agriculture, is seeking to foreclose its mortgage upon a parcel of real estate which is the subject of a junior mortgage held by Morganville Environmental Corporation ("Morganville"). Morganville is wholly owned by Mr. David Robertson, the mortgagor reflected in the mortgage which the United States is seeking to foreclose. The Appellate Division has established a time limitation which precludes mortgagees from foreclosing mortgages where there has been no payment by the mortgagor for twenty years. *Security National Partners Limited Partnership v. Mahler*, 335 *N.J. Super.* 101. The precise issue before this Court is whether the twenty year time limitation is applicable to the United States and therefore serves to bar the United States from pursuing foreclosure of this matter.

The material facts are as follows:

Defendant, David L. Robertson acquired the property known as 865 Wright-Debow Road, Jackson, NJ, 07765 for the purpose of farming in 1980. Defendant received 100% financing from Plaintiff United States Department of Agriculture, ("USDA") Farm Service Agency and paid only $100.00 of his personal funds to purchase the property.

Thereafter, the mortgage was recorded and re-recorded. There were also new mortgages executed by Mr. Robertson in favor of Plaintiff USDA, Farm Service Agency.

In 1988, Mr. Robertson sold the land to Chateau Development Corp. ("Chateau") for $305,000.00. Mr. Robertson received an immediate payment of $25,000.00 for himself. Mr. Robertson took back a junior mortgage in the sum of $280,000.00 which was to be repaid in one year. The mortgage in favor of the United States, which is the subject of this foreclosure, was not satisfied at the time of the closing and remained an encumbrance. Mr. Robertson took a subordinate mortgage. At this point, the land ceased to be used for farm purposes, Chateau planned to develop modular homes on the tract.

Chateau subsequently failed to make the payments contemplated by the note and mortgage. Defendant Mr. Robertson upon learning that the property had been abandoned by Chateau, contacted Plaintiff USDA, Farm Service Agency, to request that it foreclose on the premises. Mr. Robertson claimed that he was without funds to foreclose on his mortgage himself, and asked Plaintiff to foreclose its mortgage while the value of the property was sufficient to pay Plaintiff from the proceeds and still salvage some of Mr. Robertson's equity. Presumably, Mr. Robertson was under the impression that there would be a surplus over and above the USDA's mortgage resulting from the sheriff's sale.

Appendix C

In 1990, Defendant asserts that he met with "two women" from USDA, Farm Service Agency, again inquiring about Plaintiff foreclosing upon the property, but there was no resolution.

As indicated above, Mr. Robertson did not foreclose the mortgage he took back from Chateau claiming insufficient funds. Rather Defendant Mr. Robertson conceded that as late as 1999, he offered Plaintiff USDA, Farm Service Agency ten (10) cents on the dollar to pay off the money due to the Plaintiff USDA. If the offer had been accepted, his mortgage would then be in a first position.

In 2001, Defendant spoke with Kevin Murphy at USDA, Farm Service Agency regarding Defendant's loan balance to Plaintiff. Mr. Murphy sent a letter to Defendant dated November 19, 2001 informing Defendant that, at that time, USDA, Farm Service Agency would not be ordering an appraisal of the property until they were closer to a final disposition of a foreclosure action.

Mr. Murphy also stated in the letter that according to the Jackson Township Tax office, the registered owner of the property was Chateau Development Corp., and suggested that Mr. Robertson contact a real estate attorney in order to foreclose on the mortgage that Mr. Robertson took back for Chateau and thereby return the title into Defendant's own name. Mr. Murphy stated that at that point, Mr. Robertson would be in a position to sell the property and satisfy the obligation to the United

States. This letter has been entered into evidence as Defendant's Exhibit D-1.

Defendant Mr. Robertson has confirmed that he has not paid any monies on the mortgage since 1982. Plaintiff USDA asserts that there is now due to USDA, Farm Service Agency the total amount of $702,080.45, with interest due from April 30, 2005.

Mr. Robertson has also confirmed that he made no payments towards municipal taxes on the property, while the USDA has advanced a total of $166,952.04 for municipal taxes over the last twenty-one (21) years. Plaintiff has made seventeen (17) municipal tax advances between 1984 and 2005. The last payment toward municipal taxes was made by the United States on January 13, 2005, in the amount of $9,506.29.

On April 8, 2004, Defendant assigned his mortgages to Defendant Morganville Environmental Corp. ("Morganville"), a corporation in which Mr. Robertson is the sole shareholder.

Morganville then sought to foreclose upon the property under docket number F-11548-04. In that suit, USDA, Farm Service Agency was joined as a party defendant to determine the priority of the two mortgages. Defendants, Morganville and Mr. Robertson, stated that if the USDA, Farm Service Agency's mortgage was still valid, they would not go forward with the foreclosure. If this Court determined that the mortgage held by the United States lapsed, Morganville would proceed with its foreclosure.

USDA, Farm Service Agency then made a motion for Summary Judgment alleging that it had a superior mortgage to that of Morganville and could not be cut off by the Morganville foreclosure action.

The motion was argued in front of this Court, the issue being whether in the absence of Congressional Legislation, there could be a time limit for foreclosure on a mortgage by a governmental agency. This Court dismissed the joinder of the USDA, Farm Service Agency with prejudice after argument. That Order is now on appeal.

Subsequently, Plaintiff USDA, Farm Service Agency brought this foreclosure suit under docket number F-3886-05, seeking to foreclose its mortgage. Defendant Morganville filed an Answer on or about April 5, 2005 which contested the Plaintiff's right of foreclosure, asserting the same argument presented in the Morganville foreclosure. Specifically, Morganville and Mr. Robertson once again took the position that since no payment was made to the USDA for over twenty (20) years prior to the filing of the foreclosure, the United States is estopped from asserting a superior claim over the Morganville mortgage.

At the November 28, 2005 hearing, Defendant Mr. Robertson testified that he had wanted Plaintiff USDA, Farm Service Agency to foreclose their mortgages in order to remove the debt owed on the Notes. However, pursuant to 28 U.S.C. §2415, Mr. Robertson is no longer personally liable for the Notes and has been dismissed

as a defendant from this action. Mr. Robertson confirmed that his only concern was that he did not want to owe any money.

Specifically, at trial, Defendant Robertson took the stand, after direct and cross-examination, the Court also questioned the witness. The following is an excerpt from that testimony:

> Court: As far as you are concerned, there is no obligation to the Department of Agriculture.
>
> Mr. Robertson: That would be nice.
>
> Court: And what they do at the end of this foreclosure, whatever they do with the property, that's theirs. Is that what I understand you, is that what you want out of this?
>
> Mr. Gelzer: May it please the Court, there is no obligation on his part.
>
> Court: I didn't think so.
>
> Mr. Gelzer: As of now, there is no obligation on his part.
>
> Court: I understand that — that is what I understand.

Mr. Gelzer: Let him tell you what he wanted.

Court: As far as that is concerned, if it can be confirmed that you have no obligation to the United States Department of Agriculture, they'll just go ahead and finish this foreclosure and you're out of here.

Mr. Robertson: Yes, that would be nice.

Court: Why are we trying this?

Pause.

Mr. Gelzer: May it please the Court.

Court: Yes Sir.

Mr. Gelzer: I don't know what the Property is worth today.

Court: Nor do I.

Mr. Gelzer: It seems to me that the question before the Court is one, whether there is equitable estoppel, two, whether there is some equity there. There could be some equity for Mr. Robertson.

In *Security Nat'l Partners Limited Partnership v. Mahler*, 335 *N.J. Super.* 101, the Appellate Division held that there is a statute of limitations on the foreclosure

of mortgages where there has been no payment for twenty years. Specifically, the Court stated:

> 1. There is a twenty year limitation period governing institution of a mortgage foreclosure suit. 2. The twenty year limitation is a true statute of limitations and does not depend on presumptions of non-payment, laches, or other equitable concepts. 3. One urging the applicability of the twenty year limitation in a particular case need not show any evidence of "adverse possession" other than the lack of any payments during the twenty years in question. *Id.* at 108.

However, In the case of *United States v. Alvarado*, 5 F.3d. 1425, 1427, the United States Court of Appeals for the 11th Circuit stated:

> Courts have long held that the United States is not bound by any limitations period unless Congress explicitly directs otherwise. The doctrine that the mere passage of time cannot foreclose the rights of the United States derives from the common law principle that immunity from the limitations periods is an essential prerogative of sovereignty. This doctrine remains viable today because it furthers the public policy objective of protecting rights vested in the government for the benefit of all from the inadvertence of the agents upon which the government must necessarily rely. *Id.* at 1427.

Further, the Court stated that "any statute of limitations sought to be applied against the United States "must receive a strict construction in favor of the Government."" *Id.* at 1428.

The Court then went on to address the federal statute of limitations stating:

> Congress has passed legislation explicitly directing that a statute of limitations shall run against the United States on claims for debts founded on contracts. This legislation, *28 U.S.C. 2415(a)*, provides in pertinent part: Every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues . . . *Id.* at 1428.

However, the Court concluded that:

> "an action by the United States to foreclose on property securing a government Joan is not "an action for money damages." Rather, it is a proceeding in rem, with the United States' remedy limited to the property. We find that the plain language of § 2415(a), which covers only actions "for money damages," does not encompass foreclosure proceedings." *Id.* at 1429.

Based on the foregoing, the Court concludes that the twenty-year statute of limitations established by the Appellate Division in *Security National Partners Limited Partnership v. Mahler*, 335 *N.J. Super.* 101, is not applicable to the United States Department of Agriculture by virtue of the above analysis in the United States Court of Appeals for the Eleventh Circuit case of *United States v. Alvarado*, 5 F. 3d. 1425.

Next, the Court would look to whether estoppel applies to the United States in pursuing foreclosure against Mr. Robertson and his wholly owned corporation, Morganville.

Estoppel is an equitable doctrine invoked to avoid injustice in particular cases. *Heckler v. Community Health Services*, 467 U.S. 51, 59. The Court in *Heckler* stated:

> While a hallmark of the doctrine [of estoppel] is its flexible application, certain principles are tolerably clear: "If one person makes a definite misrepresentation of fact to another person having reason to believe that the other will rely upon it and the other in reasonable reliance upon it does an act . . . the first person is not entitled. . . (b) to regain property or its value that the other acquired by the act, if the other in reliance upon the misrepresentation and before discovery of the truth has so changed his position that it would be unjust to deprive him of that which he thus acquired."

> *Restatement (Second) of Torts § 894(1)* (1979). Thus, the party claiming the estoppel must have relied on its adversary's conduct "in such a manner as to change his position for the worse," and that reliance must have been reasonable in that the party claiming the estoppel did not know nor should it have known that its adversary's conduct was misleading. *Heckler*, 467 U.S. at 51. *See also Wilber National Bank v. United States*, 294 U.S. 120, 124-125 (1935).

However, in Hecker, the Court addresses the principle of estoppel when applied to a governmental agency by stating:

> [w]hen the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant. Petitioner urges us to expand this principle into a flat rule that estoppel may not in any circumstances run against the Government. We have left the issue open in the past, and do so again today. Though the arguments the Government advances for the rule are substantial, we are hesitant, when it is unnecessary to decide this case, to say that there are *no cases* in which the public interest

> in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government. But however heavy the burden might be when an estoppel is asserted against the Government, the private party surely cannot prevail without at least demonstrating that the traditional elements of an estoppel are present.

See also United States v. LaRosa, 993 F. Supp. 907, wherein the Court stated, "Under relevant case law, it is clear that neither the government, nor a government agency such as the IRS, can be equitably estopped from asserting its legal rights because of the actions of an agent. . . . Furthermore, courts expressly have prohibited the application of the doctrine of equitable estoppel in cases involving the IRS." *Id.* at 916.

In this case, the Court does not have to reach whether the Defendants have met their "heavy burden" in asserting estoppel against the Government because Defendants have not even satisfied the traditional elements of estoppel. The Court finds as a fact that there was no misrepresentation by the USDA. However, even if the Court were to find that there was a misrepresentation of fact, there has been no showing of a reasonable detrimental reliance by defendants.

Defendant also asserts that Plaintiff should be prevented from foreclosing due to the equitable doctrine of laches. Laches is a specialized form of estoppel.

Crandol v. Garrison, 115 N.J. Eq. 11, 20 (Chan. 1934). In *Gladden v. Public Employees Retirement System Trustee Board*, 171 N.J. Super. 353, 370-71 (App. Div. 1979), Judge Matthews stated, "Laches is a defense when there is a delay, unexplained and inexcusable, in enforcing a known right, and prejudice has resulted to the other party because of that delay." *Id.* In *Stroebel v. Jefferson Trucking & Rigging Co.*, 125 N.J.L. 484, 487, (E. & A. 1940), the Court stated:

> [L]aches involves more than delay, mere lapse of time. To deserve that category, the delay must be for a length of time which, unexplained and unexcused, is altogether unreasonable under the circumstances, and has been prejudicial to the party asserting it or renders it very doubtful that the truth can be ascertained and justice administered." *Id.*

As stated above, the Court has not found any prejudice to the Defendants by virtue of Plaintiff 's delay in seeking foreclosure. Also, there is no dispute as to what the facts of this case are. There is no doubt that the truth of the matter can and has been ascertained. Therefore, the concept of Laches does not apply to this case.

Further looking to the equities of this case, the Court would note the following. There was no down payment by Mr. Robertson on the mortgage with the USDA, it was 100% financed by the USDA. Mr. Robertson received $25,000 from the sale of the property to Chateau. Mr. Robertson made very few payments on his mortgage and

has paid no taxes on the property. The USDA has paid out all of the money for the property and has made all of the tax payments.

If Mr. Gelzer's prediction as to the value of the property is correct equity, Mr. Robertson or more accurately, Morganville, would be in a position to receive any monies from the Sheriff's Foreclosure Sale after the USDA is made whole. Those funds would be available to Mr. Robertson in the form of a surplus funds application. All junior lien holders are entitled to pursue surplus funds following a foreclosure sale of a property. If his lien has priority over all other lien holders, he will be entitled to any surplus funds available up to the amount to make him whole.

Therefore, the Court must find that the United States Department of Agriculture is not estopped from pursuing its rights in foreclosing on the property in question.

Please find an order consistent with this decision. Thank you.

Sincerely yours,
s/ James D. Clyne
James D. Clyne, P.J.Ch.

APPENDIX D — ORDER OF THE SUPREME COURT OF NEW JERSEY DENYING PETITION FOR CERTIFICATION FILED MAY 11, 2007

SUPREME COURT OF NEW JERSEY
C-928 September Term 2006
60,926

MORGANVILLE ENVIRONMENTAL CORPORATION,

Plaintiff-Petitioner,

v

CHATEAU DEVELOPMENT CORP., etc., et al.,

Defendants,

and

UNITED STATES DEPARTMENT OF AGRICULTURE, ETC.,

Defendant-Respondent.

AND ANOTHER RELATED CASE

ON PETITION FOR CERTIFICATION

FILED MAY 11, 2007

Appendix D

To the Appellate Division, Superior Court

A petition for certification of the judgment in A-6112-04 and A-2762-05 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs; and it is further

ORDERED that the appeal filed in the within matter is dismissed pursuant to *Rule 2:12-9.*

Witness the Honorable Virginia A. Long, Presiding Justice this 9th day of May, 2007.

Steven Townsend
Clerk of the Supreme Court
of New Jersey